

Liberato in Texas Lawyer: When it Comes to Sharing a Laugh at SCOTUS, the Late Justice Scalia is Still Supreme

By Lynne Liberato | May 23, 2018

Rather than standing out for the persuasiveness of my argument or the scholarship underlying my position, my U.S. Supreme Court debut in 1993 appears to have been most notable for what law professor and blogger Josh Blackman called one of the longest laughs he had heard listening to audio of the court's oral arguments.

My experience came to mind when I learned about the latest statistics from professor Jay Wexler of Boston University, who has been tracking the [laughter] notations in argument transcripts since 2005. He recently shared on Twitter that Justice Stephen Breyer was the funniest justice in the 2017-18 term with 38 laughs. But Wexler previously has said that Justice Antonin Scalia "always got the most [laughs]" until his death in 2016. Justice Neil Gorsuch, who succeeded Scalia, garnered 12 laughs for his first year.

Justice Scalia's good humor was on display when, at his expense, I got him and the rest of the court to laugh.

That day in 1993, Justice Byron White was asking whether my case involved a federal question. As part of my answer, I used the term *uberrimae fidei*, I knew well that the term refers to the duty of utmost good faith under admiralty law. Unfortunately, despite all of my rehearsal for argument, I apparently had not uttered the term to anyone who knew to correct my pronunciation.

Justice Scalia interrupted: "Ms. Liberato, does everyone say *uberrimae fidei*, or is it just people from Texas? Is that really how you say that?"

My response: "Justice Scalia, it's only Italians from Texas that say it that way."

My next response was to cringe. Time froze. Then miraculously, Justice Scalia broke into a broad smile. Justice David Souter lightly pushed at Justice Scalia's shoulder and began laughing. So did the other justices. A roar of sustained laughter followed from the audience. ...

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